

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:03CR243
)	
Plaintiff,)	
)	AMENDED
vs.)	MEMORANDUM AND ORDER
)	
JOSEPH SAUL,)	
)	
Defendant.)	

This matter is before the court on the defendant's Motion for Certificate of Appealability (Filing No. 141).¹ The defendant, Joseph Saul, appeals from the Memorandum and Order (Filing No. 139) and Judgment (Filing No. 140) denying his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion").

Before the defendant may appeal the denial of his § 2255 motion, a "Certificate of Appealability" must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

....

(B) the final order in a proceeding under section 2255.

¹The purpose of filing this Amended Memorandum and Order is to delete ¶ 2 from the Order.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

For the reasons set forth in the court’s previously issued Memorandum and Order (Filing No. 139) denying the defendant’s § 2255 motion, the court concludes that the defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. That the Motion for Certificate of Appealability (Filing No. 141) is denied; and
2. That a copy of this Order shall be mailed to the defendant at his last known address.

DATED this 13th day of November, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge